



**Federal Communications Commission  
International Bureau  
Strategic Analysis and Negotiations Division**

**Decision-making procedures and ethics rules: the practical enablers of integrity and  
impartiality in telecommunications regulation  
August 15, 2002**

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## **Ethics Documents**

### **Canada Ethics Documents**

- [Conflict of Interest and Post-Employment](#)
- [Guide on the Application of the Conflict of Interest and Post-employment Code for the Public Service](#)
- [Ethics Letter](#)

### **Hong Kong Ethics Documents**

- [Civil Service Branch Circular No. 17/92: Acceptance of Advantages \(Governor's Permission\)](#)
- [Civil Service Branch Circular No. 18/92: Acceptance of Advantages and Entertainment](#)
- [Civil Service Branch Circular No. 19/92: Conflict of Interest](#)
- [OFTA Standing Circular No. 1/99: Departmental Guidelines on Declaration of Investments](#)
- [Civil Service Bureau Circular No. 9/2001: Declaration of Investments by Civil Servants](#)
- [Civil Service Bureau Circular No. 4/2002: Managing Personal Finance and Management Measures on Staff Indebtedness in the Civil Service](#)

### **United Kingdom Ethics Document**

- [Civil Service Management Code](#)

### **United States Ethics Documents**

- [“Do It Right: An Ethics Handbook for Executive Branch Employees”](#)
- [“Ethics Program Topics”](#)

**Canadian Radio-television and Telecommunications Commission (CRTC)**  
**Review of CRTC's decision making process**

Telecom: Formal Rulemaking Process

- 1) Tariff Application: must obtain tariff to provide telecom services
  - a) Procedure:
    - i) Third Parties: 30 days to file comments
    - ii) Applicant: 10 days to file reply comment
    - iii) Occasionally:
      - (1) There could be interim approval of tariff pending final decision.
      - (2) CRTC serves interrogatories
      - (3) Public Notice is released on issues of great public interest
- 2) Part 7 Application: non-tariff applications
  - a) Importance:
    - i) Part 7 applications are used to initiate rulemaking proceedings.
  - b) Procedure:
    - i) Third Parties: 30 days to file comments
    - ii) Applicant: 10 days to file reply comment
    - iii) At minimum, all parties with adverse interest must be served, and sometimes all parties of interest are served with application, comments and reply comments.
    - iv) CRTC may broaden the scope of the proceeding
- 3) Ex Parte applications (very few)
  - a) When applications need to be filed in confidence to protect incumbent's business strategies
  - b) Interim approval might be provided pending final decision
- 4) Occasionally for both Tariff and Part 7 Applications
  - a) CRTC serves interrogatories
  - b) Public Notice is released on issues of great public interest
  - c) Public/Oral Hearing is Held
    - i) Applicant files written submission
    - ii) CRTC staff members question the applicant at oral hearing
    - iii) If third parties deem the answers from the applicant insufficient, then they can make filing requesting explaining why additional information is needed.
  - iv) Adversarial Process: 3-5 weeks on one matter
- 5) Appeals Process
  - a) Courts
    - i) Federal Court of Appeal
      - (1) Must be filed within a month of CRTC decision
      - (2) Appeal must be either on grounds of error of law or jurisdiction
      - (3) If the applicant's appeal is denied at this level, then the CRTC decision will be final.
    - ii) Intermediate Appeals Court
      - (1) If the applicant's appeal to the Federal Court of Appeal is granted, then CRTC can appeal to the Intermediate Appeals Court

- iii) Supreme Court
    - (1) If the applicant loses at the Intermediate Appeals Court, case could be brought before the Supreme Court
- b) Federal Cabinet
  - i) Must be filed within 90 days of CRTC decision
  - ii) Appeal can be on any CRTC decision based on any grounds.
  - iii) Cabinet can either review, or leave the decision alone within 12 months of CRTC decision.
  - iv) Extensive political lobbying is usually involved, but the cabinet pays deference to CRTC and its status as independent regulator and therefore rarely change CRTC decisions
- c) CRTC – proceeding for reconsideration
  - i) Reconsiderations are applied regularly: and CRTC can decide to reverse or modify a previous decision
  - ii) Prior decisions are vacated when there is substantial doubt or to reflect changes in the industry
  - iii) CRTC can also initiate own motion to modify prior decisions.
- 6) Participants in proceedings generally include
  - a) Regulated carriers
  - b) Members of the public
  - c) Public interest groups

#### Telecom: Informal Rulemaking Process

- 1) Informal rulemaking process usually involves the implementation of decisions and technical issues.
- 2) CISC (CRTC Interconnection Steering Committee)
  - a) Composed of committees, sub-committees, working groups,
    - i) CRTC staff members, industry players and consumer groups.
    - ii) Participation is voluntary and none who wishes to participate is excluded
  - b) Procedure
    - i) An issue is discussed within a large committee, working group.
    - ii) It is then submitted to the CRTC for final decision
- 3) Roundtable/Town Hall Meetings
- 4) Mediation
  - a) To resolve issues so that a formal proceeding would not be necessary

## Broadcast Formal Rulemaking Process

- 1) Public Hearing
  - a) It is generally used when the CRTC deals with applications for new broadcasting licenses and when it is considering a major policy issue or amendments to its regulations.
  - b) Procedure
    - i) CRTC reviews application and determines whether it is an issue of major concern
    - ii) If it is, CRTC publishes Notice of Public Hearing on website, in Canada Gazette and in general circulation newspapers
    - iii) Anyone interested in participating in a public hearing must submit written comments
    - iv) Applicant may respond to the comments within 10 days
    - v) The time frame from the publishing of the notice of public hearing to public hearing is 50 days
    - vi) At the hearing, the chairperson questions the parties and legal counsel is present
    - vii) Applicant is given right to reply
    - viii) All commissioners are consulted
    - ix) Panel makes final decision (panel is composed of selected commissioners)
    - x) The entire public/oral hearing lasts 3-5 days and the location is usually in Ottawa or other parts of the country for informal hearings.
  - c) Oral Hearing: Interested parties must indicate whether they would like to be heard and teleconferencing facilities maybe made available to parties from other areas of the country
- 2) Public Notice
  - a) CRTC uses the public notice process to deal with applications to review or amend broadcasting licenses and to obtain submissions on broadcasting and telecommunications topics that don't require in person discussions.
  - b) Procedure
    - i) CRTC reviews application and determines whether it is an issue of major controversy or concern
    - ii) If it is not, CRTC issues Public Notice
    - iii) If it is still not controversial, then CRTC initiates formal consultation process
    - iv) Interested parties must submit written comments by the announced deadline date.
    - v) It is strictly a written process
    - vi) CRTC decision is published in newspapers
- 3) There is no interim decision for broadcasting
- 4) Appeals Process
  - a) Courts
    - i) Federal Court of Appeal
      - (1) Must be filed within a month of CRTC decision
      - (2) Appeal must be either on grounds of error of law or jurisdiction

- (3) If the applicant's appeal is denied at this level, then the CRTC decision will be final.
  - ii) Intermediate Appeals Court
    - (1) If the applicant's appeal to the Federal Court of Appeal is granted, then CRTC can appeal to the Intermediate Appeals Court
  - iii) Supreme Court
    - (1) If the applicant loses at the Intermediate Appeals Court, case could be brought before the Supreme Court
- d) Federal Cabinet
  - i) Must be filed within 90 days of CRTC decision
  - ii) Appeal can be on any CRTC decision based on any grounds.
  - iii) Cabinet can either review, or leave the decision alone
  - iv) Extensive political lobbying is usually involved, but the cabinet pays deference to CRTC and its status as independent regulator and therefore rarely change CRTC decisions
- b) CRTC
  - i) CRTC can reconsider Broadcast Mandatory Orders.

## **Canadian Radio-television and Telecommunications Commission (CRTC) Documents**

### **Documents related to decision making**

- [National Telecom Powers and Procedures Act](#)

#### **Example 1: Regarding Anti-competitive Conduct of Bell Canada and its Affiliates in the Market for DSL services**

The Independent Members of the Canadian Association of Internet Providers (IMCAIP) requested the CRTC address issues related to the provision of DSL Internet service in Ontario and Quebec market. The CRTC denied the request by IMCAIP, with one exception. The CRTC imposed winback rules on Bell Canada with respect to residential retail DSL services in order to prevent potential abuses that may arise from access to commercially sensitive information. The CRTC also invited other large incumbent local exchange carriers to show cause as to why they should not be subject to similar winback rules.

#### Related documents

- [Regarding the Anti-Competitive Conduct of Bell Canada and its Affiliates in the Market for DSL Services \(DSL Procedure Outline August 01\)](#)
- [Canadian Association of Internet Providers application for relief, August 15, 2001 \(IMCAIP August 15, 2001\)](#)
- [Bell Canada General Tariff – Asymmetric Digital Subscriber Line \(ADSL\) Access Service Reflecting Revised Rates \(Revised tariff procedure outline, October 2001\)](#)
- [Related comments, interrogatories, and responses, classified by month](#)
- [Telecom Decision CRTC 2002-37 \(DSL Decision June 2002\)](#)

#### **Example 2: Broadcast: Application by CFMT-TV, a Division of Rogers Broadcasting Limited, for a licence to operate an ethnic-language television station in Toronto.**

CFMT TV, a division of Rogers Broadcasting Limited, applied for a license to operate an ethnic language television station in the city of Toronto. The new station would operate on channel 52 with an effective radiated power of 427,000 watts. Programming would serve the ethnic population that speaks Pan Asian and African languages. The station would dedicate 70 percent of its overall programming schedule to ethnic programming. The applicant would provide ethnic programming in no fewer than 18 languages and be directed towards no fewer than 22 distinct ethnic cultural groups. The CRTC approved the application by Rogers Communications for new ethnic television station in Toronto, but the licensee must make an application for the use of a television channel other than channel 52.

*Public Hearing documents*

- List of broadcast applications for December 3, 2001
- Public hearing agenda, December 3, 2001
- Notice of Public Hearing N2001-11
- Intervention list December 3, 2001
- Opening remarks, December 3, 2001
- CRTC Financial Summary for Television

*Hearing Transcripts, December 3-7, 2001*

- Volume 3
- Volume 4
- Volume 5
- Volume 6

*Rogers Application*

- Rogers Application 2001-0867-2
- Selected Interventions
  - Alberta Motion Picture Industry
  - Canadian Film and Television
  - Embassy of Greece
  - Li- Fang
  - Women in Television
- CFMT/Rogers Replies to Interventions
  - Craig Broadcasting Systems
  - CITS-TV
  - CIRV Radio International
  - Asian Television Network International Limited

*CRTC Decisions*

- DB 2002-82
- DB 2002-82-1

**Hong Kong Office of the Telecommunications Authority (OFTA)**  
**Review of Hong Kong's decision making process**

Public Consultation Process

- 1) When an issue is identified, OFTA issues Consultation Paper to solicit views from the industry and the general public
  - a) There is generally no separate public notice requirement apart from the press release/consultation paper on the website.
  - b) Exceptions:
    - i) In some cases, if the OFTA feels there are parties who are particularly interested in a proceeding, OFTA writes to them to draw their attention to the published consultation paper.
    - ii) Class license: there is a statutory requirement to publish a notice in the Government Gazette on the consultation.
- 2) Any interested party may submit comments by deadline
- 3) Comments are published in full to disclose the identity of the source
  - a) Exception: if commenter requests withholding of certain information and OFTA accepts such request.
- 4) OFTA issues final decision

Challenge Decision

- 1) Judicial Review
- 2) Fair Competition Provisions
  - a) Telecommunications (Competition Provisions) Appeal Board

**Hong Kong Office of the Telecommunications Authority (OFTA)**  
**Documents**

**Example 3: Review of the Telecommunications Authority's Statements No. 4, 5, 6, 7 (revised), and 8 on Interconnection and Related Competition Issues**

The Telecommunications Authority issued this consultation paper to solicit views and comments as to whether interconnection policy should be revised to reflect the competitive environment in Hong Kong and to address new and related interconnection issues that have arisen since the issue of new licenses in 1995. Among the interconnection charging principles under review are the use of long run average incremental cost approach to measure the relative costs for interconnection, the principle of determining interconnection charges based on the lower of current or historical costs, the cost recovery mechanisms for interconnection, the depreciation schedules for switching and trunk transmission/termination equipment, interconnect link costs and network conditioning costs, and other matters. At the end of the consultation process, the Telecommunications Authority arrived at a set of revised interconnection principles.

- [OFTA Consultation Paper](#)
- [OFTA Final Statement](#)
- [OFTA Statement No. 4 \(Revised\)](#)
- [OFTA Statement No. 5 \(Revised\)](#)
- [OFTA Statement No. 6 \(Revised\)](#)
- [OFTA Statement No. 7 \(Second Revision\)](#)
- [OFTA Statement No. 8 \(Revised\)](#)
- [Applicability of Statement No. 7 \(Second Revision\)](#)
- [Comments](#)
  - [AT&T Asia Pacific Group](#)
  - [Cable & Wireless](#)
  - [Hong Kong Cable Television Limited \(HKCTV\)](#)
  - [Hutchison Global Crossing](#)
  - [New World Telephone Limited](#)
  - [PCCW-HKT Telephone](#)
  - [PCCW-HKT Telephone \(late submission\)](#)
  - [Peoples](#)
  - [SmarTone](#)
  - [Sunday](#)
  - [John Ure](#)
  - [Wharf New T&T Limited](#)

**Example 4: Implementation of the Full Liberalization of the Local Fixed Telecommunications Network Services Market From 1 January 2003**

In light of the government's decision to liberalize the local and external fixed telecommunications network services markets, the Telecommunications Authority issued a consultation paper on the details of the implementation of this decided policy. The

consultation questions included arrangements for preparatory activities of the new licensees for the operation of new local fixed wireline based networks; arrangements for the placing and maintaining of telecommunications lines, including ancillary facilities, in common parts of buildings and unleased government land; and arrangements for permitting existing fixed wireline based operators and local fixed wireless to operate new local fixed wireline based networks.

- [OFTA Consultation Paper](#)
- [OFTA Statement](#)
- [Comments](#)
  - [Asia Global Crossing and Asia Global Crossing Hong Kong](#)
  - [AT&T Asia/Pacific](#)
  - [CLP Telecommunications](#)
  - [Consumer Council](#)
  - [Galaxy Satellite Broadcasting Limited](#)
  - [Hong Kong Broadband Network](#)
  - [Hong Kong Cable Television](#)
  - [Hong Kong CSL](#)
  - [Hong Kong Telecommunications Users Group](#)
  - [Hutchison Global Crossing](#)
  - [Hutchison Telephone Company and Hutchison 3G HK](#)
  - [Mandarin Communications](#)
  - [MCI World Com Asia Pacific](#)
  - [New World Telephone](#)
  - [PCCW Employees Union](#)
  - [PCCW-HKT](#)
  - [People's Telephone Company](#)
  - [PLDT](#)
  - [SmarTone Mobile Communications and SmarTone Broadband Services](#)
  - [Sprint Hong Kong](#)
  - [Wharf New T&T](#)
  - [John Ure](#)
  - [Yan Xu](#)

**United Kingdom Office of Telecommunications (Of tel)**  
**Review of Of tel's decision making process**

- 1) On broad matters of regulatory policy or competitiveness
  - a) Of tel issues a consultation document
  - b) Interested parties have up to 84 days to provide comments
  - c) An additional 14 days are provided for comments on comments
  - d) All non-confidential responses are published on Of tel's website
  - e) Of tel issues a final statement
- 2) Other matters
  - a) Of tel has discretion to shorten the period of consultation
  - b) Of tel issues a calendar where planned consultation events are published on the website
  - c) Of tel has an Email listserv. Every time a document is published on the website, it will be email to the subscriber
- 3) Other procedures
  - a) Regulatory issues of broad interest are discussed at Of tel Forums, held every quarter.
  - b) Some issues can be taken up at specific forums such as the Operator Policy Forum, the Service Provider Forum, and other narrow groups.

## **United Kingdom Office of Telecommunications (OfTel) Documents**

### **Documents on decision making**

- [Code of Practice on Written Consultation](#)
- [OFTEL's Use of Public Consultation Consultation Paper](#)
- [OFTEL's Use of Public Consultation Statement](#)
- [OFTEL Regulatory Option Appraisal Guidelines](#)

### **Example 5: Competition in the Provision of Fixed Telephony Proceeding**

While welcoming the increase in competition in the fixed telephony market and the continued reduction of British Telecom's prices, OfTel states that the market is not yet effectively competitive. In particular, British Telecom continues to have a large share of both lines and calls markets, and makes very high returns on calls, although these are offset to a significant degree by low returns on access. British Telecom's strong market position means that immediate withdrawal from regulation of retail prices would put consumers at risk. OfTel requires that BT introduce a new wholesale line rental product to enable alternative suppliers to provide a single bill. Also, OfTel will continue with price control measures in order that the lower spending 80 percent of residential customers by expenditure will face no increase in their phone bills.

- [OFTEL Consultation Paper](#)
- [OFTEL's Views](#)
- [OFTEL Statement](#)

### **Example 6: Developing a Telecommunications Ombudsman Proceeding**

This consultation explores the practicalities and feasibility of setting up an ombudsman scheme. Participation in the core scheme is compulsory for all licensed operators and systemless service providers of fixed public telephony networks or services. The core scheme covers disputes regarding fixed voice telephony, fax and dial-up Internet access between licensed operators and/or system was service providers providing a fixed public telephone network and/or a fixed public telephone service and users of service of it would cover, in particular cases where users or in dispute with an organization over the telephone bills, or over the terms and conditions under which telephone services are provided. OfTel held a public workshop related to this consultation. OfTel subsequently set out actions for industry to take in order to implement an ombudsman scheme.

- [OFTEL Consultation Paper](#)
- [OFTEL Notice of Public Workshop](#)
- [OFTEL Statement Press Release](#)
- [OFTEL Statement](#)

**United States Federal Communications Commission (FCC)**  
**Review of FCC's Decision making process**

1. Preliminary consultations

- a) Members of the public that wish the FCC to change its rules or develop new ones may file a "Petition for Rulemaking" requesting that action.
- b) Members of the public may request that the FCC clarify the scope or application of an existing rule by filing a "Petition for Declaratory Ruling" with the FCC.
- c) If the FCC is interested in a particular issue but has not formulated a specific rule change proposal, the agency may adopt a Notice of Inquiry (NOI). An NOI simply asks for comments and information about some topic or topics.

2. Rulemaking

- a) When the FCC wishes to develop or change a policy, it adopts a Notice of Proposed Rulemaking (NPRM) describing the proposed changes.
- b) The NPRM is publicly available, placed on the FCC website, and is summarized in the Federal Register.
- c) A deadline is specified for comments and reply comments.
- d) Interested parties may visit FCC commissioners and staff to express views in a proceeding, but they must file an "ex parte" letter in the public record of the proceeding, detailing whom they visited and what they discussed.
- e) FCC decisions are rendered in the form of a Report and Order (R&O). The R&O explains the FCC decision and its rationale.

3. Appeals

- a) After the FCC has released an R&O, interested parties who disagree with the decision have 30 days to file a petition for reconsideration, asking the FCC to reconsider all or part of its decision.
- b) The FCC seeks comment on such petitions and then renders its decision. The FCC can grant reconsideration petitions in whole or in part, thus modifying the original decision, or deny them.
- c) A party still not satisfied with an FCC decision may appeal to the U.S. court system.

**United States Federal Communications Commission (FCC)  
Documents**

**Example 7: Foreign Participation in telecommunications services**

The Commission adopted an *Order* to significantly increase competition in the U.S. telecommunications market by facilitating entry by foreign service providers and investors. This action will yield substantial benefits for U.S. consumers by reducing prices, providing greater service options, and spurring technological innovation. This Order, along with a companion Order governing access to non-U.S. licensed satellite systems, takes the steps necessary to open the U.S. market to increased competition. In light of the WTO Basic Telecom Agreement, the market-opening commitments of other WTO Members, and the Commission's improved competitive safeguards governing U.S. international services, the Commission determined that it could replace its previous policy restricting foreign entry with an open entry policy for carriers from WTO Members.

Related documents

- [Press release on notice of proposed rulemaking](#)
- [Foreign Participation Notice of Proposed Rulemaking](#)
- [Press release on Report and Order](#)
- [Foreign Participation Report and Order](#)

**Example 8: Submarine Cable proceeding**

The Commission adopted new streamlining procedures to promote competition in the submarine cable market. These new measures should achieve twin objectives –allowing the submarine cable market to operate with minimal regulatory oversight and preserving competitive safeguards. As a result, the costs of deploying submarine cables should decrease to the ultimate benefit of U.S. consumers. These improvements are significant because over two-thirds of U.S. international traffic is carried on submarine cables.

Related documents

- [Press release on Submarine Cable Notice of Proposed Rulemaking](#)
- [Submarine Cable Notice of Proposed Rulemaking](#)
- [Press release on public forum](#)
- [Transcript of public forum](#)
- [Press release on Submarine Cable Report and Order](#)
- [Submarine Cable Report and Order](#)